COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Pricing, based upon Total Element Long-Run Incremental Costs, for Unbundled Network Elements and Combinations of Unbundled Network Elements, and the Appropriate Avoided Cost Discount for Verizon New England, Inc. d/b/a Verizon Massachusetts' Resale Services in the Commonwealth of Massachusetts.	)	D.T.E. 01-20 (Part A)

COMMENTS OF WORLDCOM, INC. ON THE MOTIONS FOR RECONSIDERATION OR CLARIFICATION OF JULY 11, 2002 ORDER

Christopher J. McDonald
WorldCom, Inc.
200 Park Avenue, 6th Floor
New York, NY 10166
(212) 519 4164
Fax (212) 519 4569
Christopher.McDonald@wcom.com

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TABLE OF CONTENTS

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I. Introduction

Pursuant to the August 14, 2002 memorandum of Hearing Officer Hickey, WorldCom, Inc. ("WorldCom") hereby submits its comments on the motions filed on August 14, 2002 seeking reconsideration or clarification of the Department's July 11, 2002 Order ("*Order*") in this proceeding. WorldCom opposes Verizon's Motion for Reconsideration and Clarification ("Verizon Motion"), which should be denied in all respects except on those issues specifically identified herein. WorldCom generally supports the motions of the other intervenors (AT&T, Z-Tel, and the CLEC Coalition) and requests that, in addition to granting WorldCom's own motion, the Department grant the motions of the other CLEC intervenors to the extent described below.

II. Verizon's Motion Should Be Denied

Verizon's Motion proposes thirteen modifications to the Department's Order.[1] WorldCom addresses each of Verizon's proposed modifications below.

A. Verizon's request to adjust the switching EF&I factor should be rejected

Verizon seeks reconsideration of the Department's decision to apply a switch engineer, furnish and install ("EF&I") factor of 29 percent rather than Verizon's proposal of over 40 percent. Verizon argues that because the Department chose to decrease switch investment levels (by applying a switch material price discount significantly steeper than that proposed by Verizon), the Department should have increased, and not decreased, the percentage of investment costs attributable to installing switching equipment. But Verizon's argument necessarily assumes that the EF&I costs it would have recovered under its original proposal were proven to be appropriate. That is flatly wrong and completely contrary to the *Order*'s holding. Verizon's proposed EF&I costs were never found to be correct. Indeed, the Department found that the underlying methodology used to generate Verizon's EF&I factor – the use of a year's worth of purchases captured in its DCPR database – "hinder[ed] the Department's evaluation of whether Verizon's proposed EF&I factor reasonably represents its forward-looking cost of

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[1] In addition to seeking reconsideration on a number of issues, Verizon also asserts that the Department "properly relie[d]" on the Verizon recurring and non-recurring cost models (with changes and adjustments) to set Verizon's UNE rates. Verizon Motion at 1. But whether Verizon's modeling techniques generally, and its LCAM loop model in particular, are "proper" manifestations of the "start-from-scratch" approach mandated by the FCC's TELRIC rules is very much an unresolved issue, especially in light of the Supreme Court's decision in *Verizon Communications Inc. v. FCC*, No. 00-511, 535 U.S. ___ (Sup.Ct. May 13, 2002), which decision was released by the Court after briefs were filed in this docket. Given the limited scope of reconsideration, arguments on this issue –

installing switches." *Order* at 317. Accordingly, the Department found that Verizon "failed to meet its burden of proof" and "failed to justify its proposed factor." *Id.* at 317 and 319, respectively.

Thus, the Department did not "inadvertently" fail to boost the switching EF&I factor to reach the installation cost levels proposed by Verizon. The Department purposely – and correctly – tossed Verizon's EF&I proposal on the scrap heap and "look[ed] to the record for an alternative, reasonable value." *Id.* at 319. In other words, the Department did not "reduce" Verizon's proposed EF&I factor, it created a *new* EF&I factor without reference to Verizon's proposal, making the adjustment that Verizon now requests unnecessary and inappropriate.

In turning to the record for guidance, the Department identified three components of EF&I costs: the vendor cost component; the incumbent LEC cost component, and; the sales tax. *Order* at 319. Verizon does not dispute the 5 percent sales tax component, which narrows its objections to the vendor cost and incument LEC cost components.

For the vendor cost component, Verizon cannot credibly argue with the Department's chosen methodology, *i.e.*, the use of the SCIS model. Verizon itself introduced and relied on SCIS for determining its switching costs. Application of Verizon's own model to derive a necessary component of its EF&I factor is in no way unfair or inappropriate. Therefore, the Department should not adjust its adoption of the results Ms. Pitts arrived at in running the SCIS model in "material only" mode and in "EF&I mode," which yielded a vendor cost of 12

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including whether Verizon's loop model design is in compliance with TELRIC – are appropriate subjects for judicial review or future evidentiary proceedings before the Department.

percent. *See Order* at 319, citing Exh. AT&T 20 (Pitts Rev. Reb.) at its Exhibit CP-7, page 40; Tr. 2113-2114 (Vol. 11, Jan. 29, 2002).

Finally, as for the incumbent LEC component, Verizon – the party with the burden of proving its costs – left the Department with very little to work with given that Verizon's chosen methodology, using the DCPR database, had been discredited and rejected by the Department. Indeed, the Department would have been well within its discretion to deny Verizon any recovery for the incumbent LEC component of EF&I costs in light of Verizon's failure to meet its burden of proving what its costs are. Instead, the Department mined the record in search of a credible basis for assigning some percentage to the incumbent LEC cost component. As such, Verizon can hardly fault the Department's ultimate choice of 12 percent. Despite having available to it more recent, and arguably more relevant value of 8 percent as found by the FCC in its USF proceeding in 1999 (*see Order* at 319), the Department instead chose to reach further back to 1992 data, which resulted in a *higher* incumbent LEC cost component of 12 percent.

Nor can the Department be faulted for not relying on the Verizon switch purchases discussed in RR-DTE-49. There was no evidence to suggest that the six switch installations identified therein were typical or in any way representative of the work that would be required or the costs that would be incurred by a new entrant installing new digital switching equipment in central offices in Massachusetts. Indeed, the fact that the vendor and "TELCO" EF&I factors in RR-DTE-49 are all over the map suggests that the data contained therein has little to no probative value. *See Order* at 318 ("we find that this evidence underscores the sensitivity of the EF&I calculation to the nature and size of the particular projects undertaken").

Moreover, the decision not to rely on the data in RR-DTE-49 is entirely consistent with the Department's rejection, earlier in the *Order*, of a house and riser cable study performed by AT&T (which had dozens more data points than the six switch purchases relied on by Verizon). *See Order* at 208 (rejecting AT&T's house and riser cable study in part because "its samples were not statistically selected, which further undermines the reasonableness of the data"). *See also id.* at 318 ("The information provided in Exh. VZ-ATT 1-70 [concerning AT&T switch costs] is of limited value because the underlying sample size is limited").

The bottom line is that "Verizon had ample opportunity to meet its burden of proof" as to its EF&I costs but utterly failed to do so. *Order* at 317. The underlying logic of Verizon's request to increase the Department's selected EF&I factor is fatally flawed, and there is no evidence to which Verizon points that warrants an increase in the Department's selected EF&I factor. Verizon's motion on this issue should therefore be rejected.

B. Verizon fails to identify any basis on which to adjust the Department's Busy-Hour related decisions

Verizon disagrees with two decisions the Department made concerning Verizon's busy hour calculations. First, Verizon disputes the Department's selection of 308 days in the denominator of the "Busy Hour to Annual Ratio," rather than Verizon's proposal of 251 days. Second, Verizon disputes the Department's selection of a "Busy Hour to Day Ratio" of 7.0%, rather than Verizon's proposal of 8.3%. Verizon has presented no argument or evidence to warrant a change to either of the Department's decisions. The Department should therefore reject Verizon's motion on this issue.

At core, Verizon's motion concerning the appropriate number of days by which to divide the BHDR is little more than an expression of disagreement with the Department's reasoning. However, recognizing that mere disagreement fails to qualify as a legitimate basis for a motion for reconsideration, Verizon manufactures a nonexistent "mistake" on the part of the Department so as to have a basis for its motion. The mistake allegedly made by the Department is that the Department structured its busy-hour analysis on the "erroneous assumption" that Verizon spread its total costs only over business days. Verizon Motion at 9. Yet it is clear from the context of the discussion in the *Order* that the Department perfectly well understood that the function of the Busy Hour to *Annual* Ratio is to develop a per-*annual*-MOU switching cost. Indeed, Verizon's proposal of 251 days was ***not*** rejected because the use of only business days was *per se* inappropriate. The Department instead concluded that dividing the BHDR only by the number of business days was *no longer* appropriate because "traffic patterns have likely evolved since 1997." *Order* at 327.

Moreover, nowhere in the record is there any empirical justification for Verizon's selection of 251 days as the appropriate denominator. In its motion, Verizon states that "the BHDR is divided by 251 to compute the conversion factor, or the "Busy Hour to Annual Ratio," or ("BHAR"), [*sic*] which represents the relationship between traffic in the busy hour of *one* business day in the *busy* season to total traffic in the year." Verizon Motion at 9 (emphasis in original), citing Tr. 2329-2333 (Matt). Dividing the BHAR by the number of business days does not result in anything more or less than a fraction divided by 251. What may have made total business days relevant as an appropriate denominator was that the resulting ratio *did* roughly correlate to the actual relationship between a busy season's business-day busy-hour on the one hand, and total annual traffic on the other hand, *based on the historical traffic patterns that existed at the time.* The parties provided the Department with valid reasons to conclude that call traffic patterns no longer follow the traditional paradigm to the same extent they once did (*e.g.*, because of increased Internet usage), and Verizon – the party with the burden of proof – did *not* provide evidence in support of its implicit claim that traffic patterns *still do* warrant the use of business-days *only* in the denominator of the BHAR calculation. All that Verizon successfully proved was that "traffic is not identical on all days, so the use of a 365-day division would overstate the number of minutes over which Verizon could recover switching-related costs and thus would be inappropriate." *Order* at 326-27. Because a denominator of 365 would overstate the number of minutes and a denominator of 251 would understate the number of minutes, the Department chose to include non-business days, assigning them one-half the amount of traffic of business days. The result of this adjustment is that Department selected the midpoint of 251 days and 365 days, *i.e.*, 308 days. Developing an estimate as the Department did was appropriate given the limited evidence in the record. If Verizon had empirical support for its use of 251 in the denominator of this calculation, it should have submitted it with its direct case. Having failed to do so, Verizon cannot fault the Department for estimating what an appropriate adjustment should be.

Verizon also faults the Department's reduction of the BH/AHD factor from Verizon's proposed 8.3% to 7.0% as "pure speculation, not supported by any record evidence." Verizon Motion at 11. This is an ironic argument to say the least since here too, Verizon had the opportunity to support its proposal with empirical evidence but refused to do so. Verizon's 8.3% proposal was based on a 1997 study. Verizon Motion at 11. As the Department noted, it "afforded Verizon several opportunities to bolster its support" for its five-year-old study with more recent data. *Order* at 328. The Department's downward adjustment of the BH/AHD factor to 7% was entirely reasonable given that Internet usage has likely flattened out the busy hour since then. *See Order* at 327 (it is "unlikely that today's use of the public network is the same as it was five years ago when Verizon last studied this aspect of the traffic that it switches"). Verizon, as the only realistic source for "record evidence" to identify with precision what the BH/AHD factor should be given today's calling patterns, cannot be heard to complain that the Department's adjustment is unsupported by data. Were the Department to rule in Verizon's favor on this issue, it would signal to Verizon that it can avoid the adverse (*i.e.*, cost lowering) consequences of recent, reliable data simply by reaching back to old, cost-inflating studies that do not reflect the realities of today's telecommunications market. That is not a behavior the Department should encourage. Verizon's motion on this issue should be denied.

C. The Department has permitted Verizon to recover its proven RTU costs

WorldCom and other competitive LECs have been arguing for a very long time that TELRIC requires the assumption of a "new" network. Yet in jurisdiction after jurisdiction, Verizon has continued to place into the record evidence concerning the network costs it expects to incur on a going-forward basis. Massachusetts is no exception. As the Department well knows, the big ticket item Verizon pursued using this approach was with respect to the investment costs for switching equipment. In Verizon's study, ongoing purchases reflected a relatively modest "growth" discount rather than the much greater "new" switch discount; the use of the "growth" discount would have increased switch investment costs (and switching UNE rates) significantly. A companion assumption Verizon made in pursuing that windfall was that its right-to-use ("RTU") costs would also be based on its ongoing costs. Verizon freely admits that it "did *not* attempt to capture the RTU fees that must be incurred with the *initial* deployment of a new digital switch," but rather based its RTU factor on "the actual costs it had incurred over two years and the forecasted costs it would incur over the next two years." Verizon Motion at 13 (emphasis in original). Now, having lost in its quest to over-recover using the "growth" discount for switch investment, Verizon seeks to retreat from its chosen cost-recovery course with respect to RTU costs and pursue what are allegedly its would-be initial deployment RTU costs.

The problem for Verizon is that, as the Department correctly ruled, Verizon has "failed to substantiate" what those initial deployment costs would be. *Order* at 308. Quoting from Verizon's own pre-filed testimony, the Department observed that Verizon "did not attempt to estimate the cost of the initial switch software packages." *Id.*, citing Exh. VZ-38 (Verizon Recurring Panel Surreb.) at 77. The entirety of Verizon's case with respect to "initial deployment" costs was a passing reference in testimony and a footnote to a work paper from the *Consolidated Arbitrations* docket, which work paper is not part of the record in this proceeding.[2]

In applying the FCC's TELRIC standard in this investigation, the Department must be mindful that it is Verizon, and not the other intervenors in this case, who has the burden of justifying the reasonableness of the rates it seeks to impose. As noted by the FCC:

> incumbent LECs have greater access to the cost information necessary to calculate the incremental cost of the unbundled elements of the network. Given this asymmetric access to cost

[2] Verizon itself conceded the point this past Friday when it circulated a letter enclosing the work paper "that was part of the record in the *Consolidated Arbitrations* . . . [f]or ease of reference for both the Department and parties." August 23, 2002 letter from Bruce P. Beausejour to Mary Cottrell.

> data, we find that incumbent LECs must prove to the state commission the nature and magnitude of any forward-looking cost that it seeks to recover in the prices of interconnection and unbundled network elements.

Local Competition Order at ¶680. What Verizon set out trying to prove were its *ongoing* RTU costs. Because Verizon acknowledged that it was not seeking to recover its alleged initial deployment costs, it is unreasonable to expect that any other party in this proceeding would have dedicated resources to challenging Verizon's assertions as to what those alleged costs were.[3] Verizon could have, and should have, attempted to *prove* what its initial deployment costs were if it wanted to recover those costs in its UNE rates. Having failed to do so, Verizon should not be given another bite at the apple on reconsideration – after the case has been fully litigated and the record has been closed.

To the extent that Verizon argues that this result is unfair or will result in under-recovery, it should be remembered that neither the Department nor any intervenor forced Verizon to pursue its average annual RTU costs. That decision was part of Verizon's greater strategic goal of over-recovering on UNE switching rates by artificially inflating the investment costs for switching equipment. Verizon took a calculated risk by substantiating only its ongoing RTU costs. If there are no consequences to that decision, it will only mean that Verizon will continue to aggressively pursue inflated UNE costs in the future. And "consequences" in this context means only that Verizon gets to charge rates based on the costs it proved during the litigation; that is precisely what the law requires, and there is nothing unfair about it. Verizon

[3] As such, Verizon's attempt to add gravitas to the extra-record sheet of paper it circulated last week by referring to it as "the uncontradicted evidence from the previous *Consolidated Arbitrations*" is unavailing; it was "uncontradicted" because it was irrelevant to the issue at hand, namely deciding the degree to which Verizon's *ongoing* RTU costs were appropriate.

will be recovering in its UNE rates the RTU costs it set out to recover (as appropriately adjusted by the Department). It has no cause to complain about that result. Verizon's motion should be denied.

D. The Department correctly ruled that Verizon should not impose two switching charges on an intra-switch call

Verizon once again seeks the ability to impose two switching charges for an intra-switch call. The critical fact in assessing the appropriate charges for an intra-switch call – and the basis for the Department's earlier rulings on this issue – is that the call passes through the switch matrix only once, not twice, and Verizon is already being paid for the call passing through the switch by virtue of the per MOU "originating" switching charge. Moreover, Verizon acknowledges that one of the "originating" switching functions is that the switch "routes the call to the called party." Verizon Motion at 15. For an inter-switch call, that includes the activities of identifying and seizing an appropriate trunk so that the caller can obtain the end-to-end circuit needed to complete the call. Verizon does not charge CLECs *less* for originating switching of intra-switch calls, notwithstanding the fact that no trunks need to be seized. Conversely, Verizon should not be permitted to charge CLECs *more* than the originating switching costs of an intra-switch call because it has not proven that the actual (originating and terminating) costs for an intra-switch call are any greater than the actual (originating) costs for an inter-switch call. Thus, Verizon's motion should be denied insofar as it requests the authority to charge for originating and terminating switching on an intra-switch call. Verizon's request for alternative relief should also be denied. There has been no testimony – indeed no evidence of any kind – to support this proposal, and Verizon points to none.

E. The Department correctly rejected the feature port additive costs that were dependent on the estimates of Verizon's "experts"

In its motion, Verizon seeks to justify its guesswork on feature port additive usage by pointing out that "the Department has accepted expert opinion evidence testimony on many issues . . . in the case of Feature Port Additives, the Department should accept estimates derived (like many cost studies) from a knowledgeable subject matter expert so long as they are *reasonable.*" Verizon Motion at 18 (emphasis in original). In this case, however, there was no "expert opinion evidence testimony" regarding the costs of feature port additives. The so-called "experts" to which Verizon refers are unnamed, unsworn, nonwitness "product managers" whose entire contribution to the process was that they "estimated each input value." *See* Exh. AT&T-VZ 4-1-S. And there is no basis on which to conclude whether the "estimates" generated by these individuals is reasonable because, contrary to the Department's explicit direction "to provide a step by step delineation of the process product managers used to derive [each] estimate" (*Interlocutory Order* at 27), the entirety of Verizon's substantive response on the subject amounted to those four words, *i.e.*, that the product managers "estimated each input value." There was no explanation of the factors considered or criteria used by these so-called "experts." The Department should therefore reject Verizon's motion to the extent it seeks to recover feature port additive costs based on the usage estimates of Verizon's "experts."

WorldCom does not oppose Verizon's motion to the extent it seeks to recover equipment investment costs, so long as (a) the amount of equipment required is not dependent on

Verizon's unsupported usage estimates, and (b) the investment costs themselves comport with the Department's decision concerning the appropriate discount to be applied.

F. The Department correctly assigned traffic-sensitive and non-traffic-sensitive costs

There is nothing about Verizon's Motion pertaining to traffic-sensitive versus non-traffic sensitive costs that remotely resembles a valid request for reconsideration. Verizon simply does not like the outcome because, according to Verizon, the Department's decision "will send incorrect economic signals." Verizon Motion at 22. Verizon's request fails to meet the legal standard for reconsideration and should be rejected out of hand. Verizon is not arguing anything new or different than what it argued on brief, and it is not bringing to light any new facts. [4] The Department's only "mistake" is apparently that it disagreed with Verizon. Indeed, Verizon's pursuit of this issue on reconsideration is all the more surprising in light of Verizon's own admission that the Department has the discretion to rule as it did:

> The FCC has recognized that whether the costs of shared facilities (*e.g.*, getting started costs), are recovered through traffic sensitive or non-traffic sensitive rates is a policy issue that rests with the discretion of the state commission establishing UNE rates.

Verizon Motion at 24. Moreover, to the extent the Department has sent any "economic signals" in connection with its allocation of time-sensitive and non-time-sensitive costs, they are entirely consistent with the goals of TELRIC. *See Verizon Communications Inc. v. FCC*, No. 00-511,

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4 In addition, Verizon is mistaken when it states that Worldcom recommended that only 75 percent of EPHC costs be assigned to the non-traffic sensitive category. As stated clearly in WorldCom's initial brief, "WorldCom recommends that these costs [*i.e.*, EPHC costs] similarly be assigned to the port UNE rather than to the usage-sensitive switching element." WorldCom Initial Br. at 33. The 75 percent NTS figure to which Verizon refers was WorldCom's approximation for divvying up *all* switching costs, not EPHC costs. *See id.*

slip op. at 30, n.20 (Sup. Ct. May 13, 2002) ("FCC rules stressing low wholesale prices are by no means inconsistent with the deregulatory and competitive purposes of the [1996] Act").

With respect to the substance of the motion, Verizon's protests that switch processing is "ultimately limited by usage" (Verizon Motion at 23) ignores the key factor in determining cost causation for digital switches – in practice, they are port limited, not minute-of-use capacity constrained. *See* Exh. AT&T 20 (Pitts Rev. Reb.) at Exhibit CP-4 (showing proprietary average processor utilizations over the life of Verizon's Massachusetts switches). In other words, because the processing capacity of switches is so vast, the only thing that will trigger the purchase of a second switch is reaching port capacity. *See id.* at 31 & n.36. Verizon has acknowledged that "getting started" costs are "fixed costs." Tr. 1615-16 (Vol. 8, Jan. 24, 2002). And Verizon cannot legitimately dispute that EPHC costs are line and trunk port limited. *See* Exh. AT&T 20 (Pitts Rev. Reb.) at 35; Tr. 2131-36 (Vol. 11, Jan. 29, 2002).

Verizon has presented no new evidence and no new arguments in support of its position, and its rehashed arguments are no more persuasive now than they were the first time Verizon made them. Verizon's motion should be denied.

G. Verizon has failed to articulate a valid factual or legal basis for changing the application of "new" switch discount levels to 90 percent of switch investment costs

As with Verizon's previous argument, its attack on the Department's decision to base 90 percent of all Verizon switching investment on the steeper "new" switch discount level fails the test for a reconsideration motion. Verizon's approach is that because it disagrees with the Department's conclusion, the Department must be wrong. But it offers no arguments or evidence in addition to those the Department has already considered and rejected.

And like Verizon's previous argument, Verizon is wrong on the substance. First, the Department did not "inadvertently neglect[] to recognize that digital switches are fully deployed in Verizon MA's network." Verizon Motion at 26. Rather, the Department appropriately recognized that a fundamental assumption of TELRIC is a network built from scratch. *See Rhode Island §271 Order*[5] at ¶34 (TELRIC pricing assumes "a forward-looking network built from scratch"); *see also Verizon Communications Inc.*, slip op. at 51 ("T[E]LRIC estimates [are] based on a 'green field' approach, which assumes construction of a network from scratch.")(quoting with approval the reply comments the National Telecommunications and Information Administration submitted to the FCC in anticipation of the *Local Competition Order*).

Second, Verizon's arguments that current vendor "pricing strategies" and "the supply and demand of the switch market" would be upset in a TELRIC "new" network construct are off the mark. Verizon's own so-called "Megabid" contract shows that it is possible to obtain deep discounts in connection with the purchase of literally hundreds of new digital switches. *See* Exh. AT&T 20 (Pitts Rev. Reb.) at Attachment CP 3. Moreover, switch vendors would still be able to offer smaller discounts for "growth" purchases in a hypothetical network that is "dropped into place." With appropriately sized switches, however, those growth purchases would be largely unnecessary for the first few years that the switches are in place. Because Verizon has

[5] *In the Matter of Application by Verizon New England Inc., et al., for Authorization To Provide In-Region, InterLATA Services in Rhode Island*, Memorandum Opinion and Order in CC Docket No. 01-324 (rel. February 22, 2002).

chosen to measure its costs over a three-year window, the only growth additions or augments that could conceivably be included in the investment base are those that occur in the first three years after a new switch is installed. Upgrades in years four, five and six, for instance, would be inappropriate to include unless the planning period were also extended out to spread those additional costs over the additional demand occurring in those later years (*i.e.*, spreading the additional costs over a larger number of ports and a greater number of minutes of use).[6]

Verizon's request that the Department revisit this issue fails to meet the legal standard for a reconsideration motion, and the rationale Verizon offers for its preferred outcome is neither persuasive nor in compliance with FCC rules. Verizon's motion should, therefore, be denied.

H. The Department should reject Verizon's proposal to alter how NRC work times are calculated

Verizon's motion with respect to non-recurring charge work times rests on a proposition that is tenuous at best. As stated by Verizon:

> the Department's decision to use the lower bound of the 95 percent confidence interval for each work activity accounts only for the possibility that Verizon MA's sample included a disproportionate number of high times, and not for *the equally likely possibility* that it contained a disproportionate number of low work times.

Verizon Motion at 32 (emphasis added). To bolster its claim that understated work times were at least as likely to occur as overstated work times, Verizon states that "[t]here is no indication in

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[6] As such, to the extent any change is warranted in the percentage of switch investment costs that are subject to the new switch discount, it would be a change in the other direction. The evidence supports the application of the "new" switch discount to virtually 100 percent of switch investment costs.

the record (nor did the Department conclude) that Verizon MA systematically or intentionally selected workers whom it believed would report higher work times, or that Verizon otherwise made choices that led to inflated results." *Id.* The phrase "damned with faint praise" springs to mind. All that Verizon's statement means is that Verizon was not found to have openly cheated in developing work times. More important, it completely ignores what the Department *did* conclude on this subject: "we concur with the CLECs that the survey is more likely to result in over-estimates of task times because the results are used to compute costs that Verizon will charge to its competitors." *Order* at 462 (citation omitted). Therefore, contrary to Verizon's argument, it was entirely appropriate for the Department to attempt to correct the flaws in Verizon's NRC work time study with a "solution [that] only eliminates any potentially overstated work times." Verizon Motion at 31.

Notwithstanding the foregoing, if Verizon is correct that the Department's chosen methodology to redress the faults with Verizon's study results in two examples of negative work times (*see* Verizon Motion at 33), then Verizon is correct in arguing that the Department's solution is inappropriate *for those tasks.* WorldCom recommends that to the extent the Department's methodology results in either a negative number or a work time that is less than the minimum reported time in Verizon's survey, that Verizon be directed to substitute the minimum reported time in calculating NRCs. For all other work times, the methodology articulated in the *Order* should apply.

I. The Department should reject Verizon's attempt to increase collocation power cable lengths

Verizon's basis for seeking reconsideration of collocation power cable lengths quite simply defies belief:

> Verizon incorrectly stated in this proceeding that this study showed an average cable length of 60.5 feet; the actual average cable lengths produced by this study are 121 feet.

Verizon Motion at 34. Even if Verizon's assertion were true, Verizon's motion should be denied. (In this context, "true" means that the results of Verizon's study show an average cable length of 121 feet; it does *not* mean that the "actual average cable lengths" of collocation power cables in Massachusetts are 121 feet.)

While it would be unfair to hold any litigant to a standard of infallibility, a decision maker needs to draw the line on when mistakes may be corrected. Here, Verizon specifically and emphatically backtracked away from its original "121 feet" assertion in both the surrebuttal testimony of Ms. Clark, and in her testimony at the hearings. *See* Exh. VZ-29 (Clark Surreb.), at 43; Tr.1049-1050 (Vol. 6, Jan. 22, 2002). Indeed, Verizon's reliance on a 60.5 foot average power cable length in the metro zone is the primary reason Ms. Clark made the following assertion in her prefiled testimony: "It is then clear that Verizon MA's distances are quite reasonable, helping to verify the accuracy of the company's DC power cost." Exh. VZ-29 (Clark Surreb.), at 43-44. The distances that were "quite reasonable" in Ms. Clark's estimation were average power cable lengths of 60.5 for the metro zone, 56 feet for the urban zone, 51 feet for the suburban zone, and 40 feet for the rural zone, as compared to Mr. Turner's suggested length of 45-feet, and his observation that the Texas PUC had recently endorsed 55-feet. With the metro length doubling, it is no longer "reasonable"; it is an outlier. And for Verizon to come in on reconsideration and again reverse course to get this outlier length approved by the Department is patently unfair. The parties do not have the opportunity to challenge Verizon's cable length assertions now, and given Verizon's earlier representations, they had no cause to do so at the hearings. Verizon's motion should be denied.

J. The Department correctly rejected Verizon's proposed DUF charge

Perhaps the most troubling part of Verizon's request for reconsideration relating to DUF charges is footnote 34 on page 36. There, Verizon states that it "contends that it has already [removed DUF costs from the ACFs], but will demonstrate conclusively that this is the case in its compliance filing." Although not entirely clear, Verizon's statement appears to be foreshadowing the possibility of still more advocacy on issues where the Department has ruled against it. The purpose of a compliance filing, not surprisingly, is to show that a party has complied with the Department's directives. The Department should thus make clear to Verizon that its anticipated compliance filing serves a specific and limited purpose and should not be used as a vehicle for further efforts to have the Department change its decisions.

On substance, the Department denied Verizon's DUF charge because "Verizon has not met its burden of proof to provide evidence of the reasonableness of the DUF charge, and because it failed to demonstrate the absence of double recovery." *Order* at 517. Verizon does not deny that this is the case. Instead, Verizon asserts that the "solution" to the burden-of-proof issue "is to ask Verizon MA for additional information, not deny these costs outright." Verizon

Motion at 35, n.33. But this is a litigation in which Verizon has the burden of proving its costs. If the justification for Verizon's DUF charge is not yet in the record, then the solution *is* to deny the costs, as the Department appropriately has done. Likewise with respect to Verizon's failure "to demonstrate the absence of double recovery," Verizon's footnote 34 reveals Verizon's plan to essentially supplement the record with a purported demonstration in its compliance filing. Verizon's motion thus is not really a request to reconsider the evidence, it is a request to continue the litigation so that Verizon can supplement the record in the manner it so desires. That approach is inappropriate. Verizon's motion should be denied.

K. Verizon's Motion with respect to OSS should be denied

Verizon's motion concerning OSS costs has two components. With respect to Verizon's attempt to recoup its embedded OSS hardware costs, the Department was correct to deny Verizon recovery, as "[t]he pricing of UNEs, per the TELRIC method, is not an exercise in cost recovery." *Order* at 510, n.190, quoting *Consolidated Arbitrations Phase 4-L Order* at 46. Verizon made no attempt to estimate what the future OSS hardware costs of a new, efficient entrant would be. [7]

The second component of Verizon's motion as it relates to OSS is a request that the Department reconsider its decision to spread ongoing software maintenance costs over all access lines. The debate in the *Order* and in Verizon's Motion centers on whether Verizon itself "benefits" from the existence of OSS. Verizon claims it receives no benefit, whereas AT&T

[7] In the event the Department opts to permit Verizon some level of recovery for its OSS hardware costs (a decision that WorldCom submits is at odds with the evidence and sound policy), it should be mindful of the fact that Verizon's requested costs are far too high. The Department chose not to address AT&T's proposal for a 75 percent

claims that Verizon does receive a benefit. WorldCom submits that the focus of the analysis should shift from the carriers to the consumers. *All* end-users in the Commonwealth "benefit" from the presence of competition for local phone service. Lower prices, innovative products and services, and better customer service are the hallmarks of a robustly competitive market. Even customers who do not themselves switch carriers benefit because their current carrier is presumably vying to keep all of its end users' business and avoid a decrease in its market share. Because the benefits of competition are shared by all consumers, the OSS-related costs that facilitate competition should also be shared by all consumers. The simplest way to accomplish that goal is to spread the OSS costs over the total number of access lines, as the Department has done. *See Order* at 511. As such, Verizon's motion should be denied.

L. The Department correctly ruled that inter-office facilities should be available either with or without DCS, at the CLEC's option

Although styled as a motion for reconsideration, Verizon's discussion of DCS could more accurately be described as several pages of unattributed, unsworn sur-surrebuttal testimony in further support of its position that DSC costs should not be separated from dedicated inter-office transport costs. In addition to being wholly inappropriate, Verizon's assertions are disturbing because they are at odds with Verizon's sworn surrebuttal testimony.

On surrebuttal, Verizon's recurring cost panel responded to the testimony of AT&T/WorldCom witness Steven Turner, who asserted that DCS (and its associated costs) could be separated from dedicated transport. *See* Exh. AT&T 16 (Turner Reb.) at 10-13. In its

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reduction in Verizon's OSS hardware costs. *See Order* at 510, n.191. Should the Department grant Verizon's motion, it should also revisit the issue of what those costs should be and reduce them significantly.

response, Verizon made it clear that the unbundling of which Mr. Turner spoke was physically possible, but a poor economic choice from Verizon's perspective:

> The issue is not whether the DCS hypothetically could be removed from the architecture. It clearly could be. Rather, the issue is whether the dedicated transport UNEs can be provided at the same efficient cost developed in the Verizon study without the DCS functionality. This is not the case. As described earlier, the DCS supplies numerous functions essential to the delivery of dedicated transport channels across the network. Without the DCS these functions would still have to be performed but through inefficient, manual processes. The grooming and aggregation functions provided by the DCS would be completely lost resulting in lower channel fill on the high capacity transport facilities. The overall effect would be to increase the cost of the dedicated UNE elements above those calculated in the model assuming DCS.

Exh. VZ 38-A (Recurring Panel Surreb.) at 91. In its reconsideration motion, Verizon continues to tout the "cost savings" of its decision to include DCS functionality (and costs) in its DS1 transport study (Verizon Motion at 39), but also claims that creating "two DS1 transport options (*i.e.*, one with DCS at the terminating ends and one without) also would be impossible to implement as a practical matter." *Id.* at 40.

But Verizon's argument seems to assume that it would continue to use DCS even when CLECs opt not to use it. That is incorrect. Rather, the so-called "inefficient, manual processes" to which Verizon referred in its surrebuttal testimony would be used to connect the interoffice facilities to multiplexing or other equipment in the CLEC's collocation cage, bypassing the DCS equipment altogether. By utilizing "other alternatives for accomplishing the same functionality as DCS, in a much less costly manner (e.g., ATM switching),"[8] CLECs can more than compensate for the "inefficiencies" Verizon ostensibly seeks to protect them from by making them use – and pay for – DCS functionality that CLECs may not need or want. No reconsideration of the Department's *Order* is necessary because the Department decided this issue correctly. Verizon's reconsideration motion with respect to DCS should be denied.

M. The Department should clarify the circumstances in which Verizon may charge for field dispatches

With respect to Verizon's Motion as it relates to field dispatches, WorldCom believes that the Department's approach should be similar to its approach to loop conditioning. Finding that "Verizon cannot base its cost studies on a hypothetical network and then seek to recover its costs based on existing network design" (*Order* at 259), the Department reaffirmed its earlier rulings that Verizon should not be permitted to recover for loop conditioning charges because the loops in the forward-looking network would not have load coils or bridged taps. *Id.* The only exception to that rule is "when a loop meets CSA standards and a CLEC still requests to have the load coils and bridged taps removed . . . [in which case] the requesting CLEC is responsible for the loop conditioning charges unless it can demonstrate to the Department that the CSA-compliant loop cannot support DSL." *Id.* at 259-260.

Applying that same logic to field dispatches, Verizon should be permitted to charge for field dispatches, but only to the extent such dispatches would be required in the forward-looking network. In other words, if Verizon needs to dispatch a technician, the costs associated with that dispatch should not be chargeable to the CLEC if the task to be performed would be unnecessary in the efficient forward-looking TELRIC network, or if the task could be accomplished remotely in the forward-looking network. However, if a CLEC requests that a task

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[8] Exh. ATT-16 (Turner Reb.) at 11-12; see also Tr. 1530-1531 (Vol. 8, Jan. 24, 2002 (Turner)).

be performed beyond that which would be necessary in the forward-looking network (similar to the CLEC request to condition a CSA-compliant loop), the CLEC should pay.

III. The Motions of the other CLEC intervenors should be granted to the extent described herein

A. The Department should reduce Verizon's cost of capital

Like WorldCom, AT&T has sought reconsideration of the Department's selection of a weighted average cost of capital of 11.45 percent. The points raised in AT&T's motion bolster WorldCom's own arguments that the Department should reconsider and revise the cost of equity component of its cost of capital calculation to reflect the fact that Verizon faces very little risk of stranded investment. *Compare* AT&T Motion at 1-11 *with* Motion of WorldCom Inc. for Partial Reconsideration ("WorldCom Motion") at 4-14. WorldCom agrees with and supports AT&T's analysis, and urges the Department to recognize that Verizon's low risk should be reflected in a return on equity capital that is significantly lower than the 12.75 percent the Department selected in the *Order*.

B. The Department should reject AT&T's motion to reduce the amount of UDLC in the forward-looking network, and instead grant WorldCom's motion to purge the network of UDLC entirely

AT&T has also sought reconsideration of the Department's ruling on the appropriate technology mix between IDLC and UDLC for fiber-fed loops. Unlike WorldCom, AT&T has not requested the Department to eliminate UDLC entirely. Instead, AT&T has requested that the amount of UDLC in the forward-looking network be reduced considerably.

AT&T has persuasively demonstrated that the Department has kept an amount of UDLC in the modeled loop plant that is much greater than that which could possibly be required given known and projected demand for the services purportedly needing UDLC loops. Were it appropriate to include UDLC in the TELRIC model, AT&T has shown that the amount approved by the Department – nearly 20 percent – could be halved and there would still be more UDLC than would be necessary However, as stated in WorldCom's motion for reconsideration, there is no need for UDLC loops in the forward-looking network. *See* WorldCom Motion for Partial Reconsideration at 15-25. As such, WorldCom believes that the Department should set the amount of UDLC in the forward-looking network at zero, making AT&T's motion moot.

C. The Department should clarify that UNE loop costs should be offset by future demand growth projections

AT&T also raises a valid point with respect to the impact of growth projections on UNE loop costs. AT&T Motion at 15-16. Given that the Department agreed in concept that the evidence supported a demand growth assumption (*Order* at 302), it may have been an oversight that the *Order* did not include an ordering clause directing Verizon to make the necessary adjustments. AT&T's motion should be granted on this issue.

D. The Department should reconsider and reduce Verizon's switch material prices

WorldCom also supports AT&T's request for reconsideration with respect to switch material prices, particularly as it relates to the pricing of Nortel switches. Verizon itself admitted in its reply brief that the price-per-line material costs Verizon actually pays for new Nortel switches are *lower* than the price-per-line costs Verizon used in its cost study and approved by the Department. *See* AT&T Motion at 20, citing Verizon Reply Brief at 67. The Department's erroneous conclusion that Nortel switch material prices would be "much higher" than admitted by Verizon warrants a fresh look at the evidence, and a downward adjustment of the material costs Verizon may recover in its UNE rates.

E. Compliance with TELRIC compels that the hot-cut NRC should be further reduced

Both AT&T and the CLEC Coalition address the issue of hot cuts. Without addressing the specifics of the arguments made, WorldCom generally agrees that it is critical for the Department to resolve all outstanding issues concerning the hot-cut process and rates expeditiously, and that hot-cut and other non-recurring rates be set at levels that permit Verizon's competitors to remain in the marketplace and vie for end user customers.

F. Verizon's Forward-Looking to Current factor should be eliminated

Z-Tel has moved for reconsideration of the Department's decision to allow Verizon to use a Forward-Looking to Current ("FLC") factor. WorldCom agrees with Z-Tel that the FLC factor inappropriately inflates Verizon's costs and should be eliminated.

IV. Conclusion

For all the foregoing reasons, WorldCom respectfully requests the Department to reject Verizon's motion for reconsideration or clarification to the extent discussed herein. WorldCom further requests that, in addition to granting WorldCom's own motion for reconsideration, the Department also grant the motions for reconsideration of the other CLEC intervenors as discussed herein.

Respectfully submitted,

WORLDCOM, INC.

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Christopher J. McDonald
WorldCom, Inc.
200 Park Avenue, 6th Floor
New York, NY 10166
(212) 519 4164
Fax (212) 519 4569
Christopher.McDonald@wcom.com

Dated: New York, New York
August 29, 2002

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing upon each person designated on the service list in this proceeding by either U.S. mail, overnight courier, facsimile or email.

Dated: New York, New York
August 29, 2002

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